

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 13, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL T.,¹

Plaintiff,

v.

ANDREW M. SAUL, the Commissioner
of Social Security,²

Defendant.

No. 4:19-CV-5103-EFS

**ORDER GRANTING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION
AND DENYING DEFENDANT'S
SUMMARY-JUDGMENT MOTION**

Before the Court are the parties' cross summary-judgment motions.³

Plaintiff Michael T. appeals the denial of benefits by the Administrative Law Judge (ALJ). He alleges the ALJ erred by 1) improperly weighing the medical opinions; 2)

¹ To protect the privacy of the social-security Plaintiff, the Court refers to him by first name and last initial or by "Plaintiff." *See* LCivR 5.2(c).

² Because Andrew Saul is the Commissioner of the Social Security Administration, the Court substitutes him as the Defendant. *See* Fed. R. Civ. P. 25(d).

³ ECF Nos. 13 & 14.

1 discounting Plaintiff's symptom reports; 2) improperly determining that Plaintiff
 2 did not have a severe mental impairment; 3) improperly determining that the
 3 impairments did not meet or equal a listed impairment; and 4) failing to conduct
 4 an analysis at steps four and five. In contrast, Defendant Commissioner of Social
 5 Security asks the Court to affirm the ALJ's decision finding Plaintiff not disabled.
 6 After reviewing the record and relevant authority, the Court grants Plaintiff's
 7 Motion for Summary Judgment, ECF No. 13, and denies the Commissioner's
 8 Motion for Summary Judgment, ECF No. 14.

9 I. Five-Step Disability Determination

10 A five-step sequential evaluation process is used to determine whether an
 11 adult claimant is disabled.⁴ Step one assesses whether the claimant is currently
 12 engaged in substantial gainful activity.⁵ If the claimant is engaged in substantial
 13 gainful activity, benefits are denied.⁶ If not, the disability-evaluation proceeds to
 14 step two.⁷

15 Step two assesses whether the claimant has a medically severe impairment,
 16 or combination of impairments, which significantly limits the claimant's physical
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 19 ⁴ 20 C.F.R. §416.920(a).

20 ⁵ *Id.* §416.920(a)(4)(i).

21 ⁶ *Id.* §416.920(b).

22 ⁷ *Id.* §416.920(b).

1 or mental ability to do basic work activities.⁸ If the claimant does not, benefits are
2 denied.⁹ If the claimant does, the disability-evaluation proceeds to step three.¹⁰

3 Step three compares the claimant's impairment(s) to several recognized by
4 the Commissioner to be so severe as to preclude substantial gainful activity.¹¹ If an
5 impairment meets or equals one of the listed impairments, the claimant is
6 conclusively presumed to be disabled.¹² If an impairment does not, the disability-
7 evaluation proceeds to step four.

8 Step four assesses whether an impairment prevents the claimant from
9 performing work he performed in the past by determining the claimant's residual
10 functional capacity (RFC).¹³ If the claimant is able to perform prior work, benefits
11 are denied.¹⁴ If the claimant cannot perform prior work, the disability-evaluation
12 proceeds to step five.

13 Step five, assesses whether the claimant can perform other substantial
14 gainful work—work that exists in significant numbers in the national economy—in
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16 ⁸ 20 C.F.R. § 416.920(a)(4)(ii).

17 ⁹ *Id.* § 416.920(c).

18 ¹⁰ *Id.*

19 ¹¹ *Id.* § 416.920(a)(4)(iii).

20 ¹² *Id.* § 416.920(d).

21 ¹³ *Id.* § 416.920(a)(4)(iv).

22 ¹⁴ *Id.*.

1 light of the claimant's RFC, age, education, and work experience.¹⁵ If so, benefits
2 are denied. If not, benefits are granted.¹⁶

3 The claimant has the initial burden of establishing entitlement to disability
4 benefits under steps one through four.¹⁷ At step five, the burden shifts to the
5 Commissioner to show that the claimant is not entitled to benefits.¹⁸

6 If there is medical evidence of drug or alcohol addiction (DAA), the ALJ must
7 then determine whether DAA is a material factor contributing to the disability.¹⁹
8 To determine whether DAA is a material factor contributing to the disability, the
9 ALJ evaluates which of the current physical and mental limitations would remain
10 if the claimant stopped using drugs or alcohol and then determines whether any or
11 all of the remaining limitations would be disabling.²⁰ Social Security claimants
12 may not receive benefits if the remaining limitations without DAA would *not* be
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16 ¹⁵ 20 C.F.R. § 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497-98 (9th Cir.
17 1984).

18 ¹⁶ 20 C.F.R. § 416.920(g).

19 ¹⁷ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

20 ¹⁸ *Id.*

21 ¹⁹ 20 C.F.R. § 416.935(a).

22 ²⁰ 20 C.F.R. § 416.935(b)(2).
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1 disabling.²¹ The claimant has the burden of showing that DAA is not a material
 2 contributing factor to disability.²²

3 II. Factual and Procedural Summary

4 Plaintiff filed an XVI application, alleging a disability onset date of
 5 November 22, 2014.²³ His claim was denied initially and upon reconsideration.²⁴ A
 6 video administrative hearing was held before Administrative Law Judge R.J.
 7 Payne.²⁵

8 In denying Plaintiff's disability claim, the ALJ made the following findings:

- 9 • Step one: Plaintiff had not engaged in substantial gainful activity
 10 since March 23, 2015, the application date;
- 11 • Step two: Plaintiff had the following medically determinable severe
 12 impairments: depressive disorder, anxiety disorder, personality
 13 disorder, and substance abuse/addiction (methamphetamine, cocaine,
 14 cannabis). Depressive disorder, anxiety disorder, and personality
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17 ²¹ 42 U.S.C. § 423(d)(2)(C); 20 C.F.R. §, 416.935(b); *Sousa v. Callahan*, 143 F.3d
 18 1240, 1245 (9th Cir. 1998).

19 ²² *Parra*, 481 F.3d at 748.

20 ²³ AR 256, 260, & 264.

21 ²⁴ AR 91 & 100.

22 ²⁵ AR 35.

1 disorder impairments were considered non-severe without the
2 consideration of DAA.

- 3 • Step three: Plaintiff's impairments, with consideration of DAA, met
4 Listings 12.04, 12.06, and 12.08, in combination. However, if Plaintiff
5 stopped the substance use, the remaining limitations would not cause
6 more than a minimal impact on Plaintiff's ability to perform basic
7 work activities; therefore, Plaintiff would not have a severe
8 impairment or combination of impairments.²⁶

9 When assessing the medical-opinion evidence, the ALJ gave:

- 10 • great weight to the opinion of testifying psychologist medical expert
11 Jay Toews, Ph.D.;
- 12 • Some weight to the examining opinion of psychologist Ronald Page,
13 Ph.D., when considering the severity of Plaintiff's mental
14 impairments with substance abuse; and
- 15 • little weight to the opinions of state agency psychologists Bruce
16 Eather, Ph.D. and Vincent Gollogly, Ph.D.; DSHS psychologist Holly
17 Petaja, Ph.D.; and Dr. Page, when assessing the severity of Plaintiff's
18 impairments without substance abuse.

19 The ALJ also found that if Plaintiff stopped the substance abuse, Plaintiff's
20 medically determinable impairments could reasonably be expected to cause some of
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22 ²⁶ AR 18 & 21-24.

1 the alleged symptoms, but that his statements concerning the intensity,
2 persistence, and limiting effects of those symptoms were not entirely consistent
3 with the medical evidence and other evidence in the record.²⁷ Likewise, the ALJ
4 discounted Plaintiff's mother's lay statements.²⁸

5 Plaintiff requested review of the ALJ's decision by the Appeals Council,
6 which denied review.²⁹ Plaintiff timely appealed to this Court.

7 III. Standard of Review

8 A district court's review of the Commissioner's final decision is limited.³⁰ The
9 Commissioner's decision is set aside "only if it is not supported by substantial
10 evidence or is based on legal error."³¹ Substantial evidence is "more than a mere
11 scintilla but less than a preponderance; it is such relevant evidence as a reasonable
12 mind might accept as adequate to support a conclusion."³² Moreover, because it is
13 the role of the ALJ and not the Court to weigh conflicting evidence, the Court
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17 ²⁷ AR 23.

18 ²⁸ AR 22.

19 ²⁹ AR 1.

20 ³⁰ 42 U.S.C. § 405(g).

21 ³¹ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

22 ³² *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).
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upholds the ALJ's findings "if they are supported by inferences reasonably drawn from the record."³³ The Court considers the entire record as a whole.³⁴

Further, the Court may not reverse an ALJ decision due to a harmless error.³⁵ An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination."³⁶ The party appealing the ALJ's decision generally bears the burden of establishing harm.³⁷

IV. Analysis

A. Medical Opinions: Plaintiff establishes error.

Plaintiff challenges the ALJ's assignment of little weight to the opinions of Ronald Page, Ph.D., Holly Petaja, Ph.D., Bruce Eather, Ph.D., and Vincent Gollogly, Ph.D. The Court agrees the ALJ erred in failing to meaningfully explain

³³ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

³⁴ *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must consider the entire record as whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence cited by the ALJ or the parties.); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]").

³⁵ *Molina*, 674 F.3d at 1111.

³⁶ *Id.* at 1115 (quotation and citation omitted).

³⁷ *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

1 why he discounted these medical opinions in relation to Plaintiff's functioning
2 without substance abuse.

3 The weighing of medical-source opinions is dependent upon the nature of the
4 medical relationship, i.e., 1) a treating physician; 2) an examining physician who
5 examines but did not treat the claimant; and 3) a non-examining physician who
6 neither treated nor examined the claimant.³⁸ Generally, more weight is given to
7 the opinion of a treating physician than to an examining physician's opinion and
8 both treating and examining opinions are to be given more weight than the opinion
9 of a non-treating physician.³⁹ When a treating physician's or evaluating physician's
10 opinion is not contradicted by another physician, it may be rejected only for "clear
11 and convincing" reasons, and when it is contradicted, it may not be rejected
12 without "specific and legitimate reasons" supported by substantial evidence in the
13 record.⁴⁰ A reviewing physician's opinion may be rejected for specific and legitimate
14 reasons supported by substantial evidence, and the opinion of an "other" medical
15 source may be rejected for specific and germane reasons supported by substantial
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20 ³⁸ *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

21 ³⁹ *Id.*; *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).

22 ⁴⁰ *Lester*, 81 F.3d at 830.

1 evidence.⁴¹ The opinion of a nonexamining physician serves as substantial evidence
2 if it is supported by other independent evidence in the record.⁴²

3 1. Dr. Page

4 Dr. Page performed a psychological evaluation of Plaintiff on April 12, 2012,
5 and March 6, 2015. Dr. Page diagnosed Plaintiff with methamphetamine use
6 disorder (self-stated abstinence for 106 days), cannabis use disorder, nicotine use
7 disorder, and antisocial personality disorder. Dr. Page opined that Plaintiff was
8 moderately limited in understanding, remembering, and persisting in tasks by
9 following detailed instructions; learning new tasks; completing a normal work day
10 and work week without interruptions from psychologically based symptoms;
11 maintaining appropriate behavior in a work setting; and setting realistic goals and
12 planning independently. Dr. Page also opined Plaintiff had marked limitations in
13 performing activities within a schedule, maintaining regular attendance, and being
14 punctual within customary tolerances without special supervision.⁴³ Dr. Page
15 opined that Plaintiff's impairments were primarily the result of alcohol or drug use
16 within the past sixty days and that the impairments would persist following sixty
17 days of sobriety.⁴⁴

19 ⁴¹ *Molina*, 674 F.3d at 1111; *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2009).

20 ⁴² *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

21 ⁴³ AR 373.

22 ⁴⁴ *Id.*

1 The ALJ discounted Dr. Page’s testimony assessing Plaintiff’s functioning
2 without substance abuse because Dr. Page “expressly noted that [Plaintiff’s]
3 current impairments were primarily the result of alcohol/drug use” and “[w]hile he
4 also indicated that [Plaintiff’s] impairments would persist following 60 days of
5 sobriety, he did not provide an opinion as to how they would change.”⁴⁵

6 In conducting a DAA analysis, the “key factor” for the ALJ to consider is
7 whether the claimant would still be disabled if the claimant stopped using drugs or
8 alcohol.⁴⁶ Therefore, the fact that a medical report reflects a claimant’s functioning
9 while using drugs or alcohol is a valid consideration to make in evaluating a
10 medical opinion.⁴⁷ Here, while Dr. Page noted Plaintiff’s current impairments were
11 primarily the result of alcohol or drug use within the past 60 days, Dr. Page
12 reported that Plaintiff’s current impairments would be the same impairments
13 persisting following 60 days of sobriety, indicating Dr. Page’s assessment of
14 limitations would remain the same with or without the effects of Plaintiff’s drug
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19 ⁴⁵ AR 21.

20 ⁴⁶ 20 C.F.R. § 416.935(b)(2).

21 ⁴⁷ *See Chavez v. Colvini*, No. 3:14-cv-01178-JE, 2016 WL 8731796, at *8 (D. Or. July
22 25, 2016).
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1 and alcohol abuse.⁴⁸ Thus, the ALJ's reason for rejecting Dr Page's opinion is not
2 supported by the record and does not constitute a specific and legitimate reason for
3 rejecting the report.

4 The Commissioner relies on *Andrews v. Shalala*, 53 F.3d 1035 (9th Cir.
5 1995), to argue that the ALJ's decision to discount Dr. Page's opinion was
6 appropriate because "he opined that Plaintiff's limitations were 'primarily the
7 result' of substance abuse and was contradicted by Dr. Toews testimony."⁴⁹ But the
8 ALJ in *Andrews* heavily relied on the fact that the plaintiff lacked credibility based
9 on comments made by the plaintiff. Here, the record supports Plaintiff being
10 honest and up front with treatment providers about his drug use and history.⁵⁰ In
11 addition, the issue here is not whether Dr. Toews' opinion contradicted Dr. Page's
12 opinion or the credibility of Plaintiff, but rather if the ALJ erred in rejecting Dr.
13 Page's opinion because Plaintiff's current impairments were primarily the result of
14 alcohol/drug use and Dr. Page did not provide an opinion as to how Plaintiff's
15 impairments would change. And as explained above, this is not a specific and
16 legitimate reason for rejecting the opinion.

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18 ⁴⁸ AR 373 (When asked, "Would the current impairments persist following 60 days
19 of sobriety?" Dr. Page answered "Yes" rather than answering "If Not, how would they
20 change?").

21 ⁴⁹ ECF No. 14 at 17.

22 ⁵⁰ See, e.g., AR 40-41, 45, 335, 410 & 422.
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1 2. Dr. Petaja

2 In March 2015, Dr. Petaja reviewed Dr. Page's March 2015 opinion and 2012
3 psychological evaluation and agreed with Dr. Page's diagnosis of antisocial
4 personality disorder and polysubstance use disorder.⁵¹ Dr. Petaja assessed a
5 severity rating of four for Plaintiff's maladaptive personality traits, hypomanic,
6 loose associations, social anxiety/intolerant of others, and lack of insight.⁵² Dr.
7 Petaja opined that Plaintiff had moderate limitations in understanding,
8 remembering, and persisting in tasks by following detailed instructions and
9 learning new tasks. Dr. Petaja also opined that Plaintiff had marked limitations in
10 performing activities within a schedule, maintaining regular attendance and being
11 punctual within customary tolerances; maintaining appropriate behavior in a work
12 setting; completing a normal workday and workweek without interruptions from
13 psychologically based symptoms; and setting realistic goals and planning
14 independently.⁵³ Dr. Petaja opined that Plaintiff's mental impairments were due to
15 alcohol or drug abuse/addiction and would persist at least 12 months after Plaintiff
16 ceased using drugs or alcohol.⁵⁴

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19 ⁵¹ AR 409.

20 ⁵² *Id.*

21 ⁵³ AR 408.

22 ⁵⁴ AR 407 & 409.

1 Like Dr. Page's opinion, the ALJ discounted Dr. Petaja's testimony assessing
 2 Plaintiff's functioning without substance abuse because she "provided no opinion as
 3 to the degree to which [Plaintiff's impairments] would affect functioning" after "60
 4 days of sobriety."⁵⁵ As explained above, while Dr. Petaja noted Plaintiff's current
 5 impairments were primarily the result of alcohol or drug use within the past 60 days,
 6 Dr. Petaja reported that Plaintiff's current impairments would persist for at least 60
 7 days after Plaintiff stopped using drugs or alcohol, indicating Dr. Petaja's
 8 assessment of limitations would remain the same with or without the effects of
 9 Plaintiff's drug and alcohol abuse.⁵⁶ Thus, the ALJ's reason for rejecting Dr. Petaja's
 10 opinion is not supported by the record and does not constitute a specific and
 11 legitimate reason for rejecting the report.

12 3. Dr. Eather and Dr. Gollogly

13 In May 2015, Dr. Eather, upon initial review of Plaintiff's disability claim,
 14 opined Plaintiff had a severe personality disorder impairment that moderately
 15 limited his ability to interact appropriately with the general public and ability to
 16 respond appropriately to changes in the work setting.⁵⁷ Dr. Eather opined Plaintiff
 17 would work best when not interacting significantly with the public, is capable of
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19 ⁵⁵ AR 22.

20 ⁵⁶ AR 409 (When asked, "Would the mental impairments persist at least 60 days if
 21 the client stops using drugs or alcohol?" Dr. Petaja checked "Yes").

22 ⁵⁷ AR 89.

1 superficial interaction with supervisors and coworkers, would be able to adapt to
2 occasional changes in a work setting, avoid normal hazards, and travel.⁵⁸ In July
3 2015, Dr. Gollogly, on reconsideration of Plaintiff's disability claim, opined that
4 Plaintiff had personality disorder and affective disorder impairments that
5 moderately limited his ability to interact appropriately with the general public and
6 ability to respond appropriately to changes in the work setting.

7 The ALJ discounted Dr. Eather's and Dr Gollogly's opinions for the following
8 reasons:

9 Unlike Dr. Toews they did not review the entire medical record. While
10 Drs. Eather and Gollogly did note [Plaintiff's] history of polysubstance
11 abuse, they indicated this was in early full remission, as the claimant
12 had completed inpatient chemical dependency treatment in January
13 2015 and was reportedly attending AA meetings twice daily. Ex. 1A/6;
14 3A/4. Accordingly, their opinions are predicated on [Plaintiff's] status
of being in early remission from substance abuse around the time of
their assessments. As discussed below, the subsequent medical
evidence indicates [Plaintiff] relapsed and again began using drugs (in
particular, meth).⁵⁹

15 The extent to which a medical source is "familiar with the other information
16 in [the claimant's] case record" is relevant in assessing the weight of that source's
17 medical opinion.⁶⁰ While the ALJ is correct that Dr. Toews reviewed the entire
18 medical record in this case, unlike Drs. Eather and Gollogly, Defendant points to

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20 ⁵⁸ AR 89-90.

21 ⁵⁹ AR 21.

22 ⁶⁰ See 20 C.F.R. § 416.927(c)(6).
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1 nothing in the record that shows Dr. Eather and Dr. Gollogly reviewed different
2 evidence than Dr. Toews that relates to the period of time Plaintiff remained
3 sober.⁶¹ In fact, Dr. Eather completed his assessment in May 2015, only one month
4 before Plaintiff relapsed, and Dr. Gollogly completed his assessment in July 2015,
5 one month after Plaintiff relapsed. In conducting a DAA analysis, the “key factor”
6 for the ALJ to consider is whether the claimant would still be disabled if the
7 claimant stopped using drugs or alcohol.⁶² Therefore, the fact that Dr. Eather’s and
8 Dr. Gollogly’s opinions were predicated on the longest period of time Plaintiff
9 remained sober and included the same evidence as reviewed by Dr. Toews, the ALJ
10 erred by discounting the opinions because they were based on Plaintiff being in
11 early remission from substance abuse at the time of their assessments.

12 In summary, Plaintiff establishes the ALJ erred in discounting the medical
13 opinions.

14 **B. Plaintiff’s Symptom Reports: Plaintiff establish error.**

15 Plaintiff argues the ALJ failed to provide valid reasons for rejecting his
16 symptom reports. When examining a claimant’s symptom reports, the ALJ must
17 make a two-step inquiry. “First, the ALJ must determine whether there is objective
18 medical evidence of an underlying impairment which could reasonably be expected
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20 ⁶¹ It appears, and the parties agree, Plaintiff abstained from methamphetamine use
21 from approximately November 2014 to June 2015. *See* AR 19, 53-54, & 515.

22 ⁶² 20 C.F.R. § 416.935(b)(2).
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1 to produce the pain or other symptoms alleged.”⁶³ Second, “[i]f the claimant meets
2 the first test and there is no evidence of malingering, the ALJ can only reject the
3 claimant’s testimony about the severity of the symptoms if [the ALJ] gives ‘specific,
4 clear and convincing reasons’ for the rejection.”⁶⁴ Here, the ALJ found Plaintiff’s
5 statements concerning the intensity, persistence, and limiting effects of his
6 symptoms inconsistent with the objective medical evidence and other evidence.⁶⁵

7 First, as to the ALJ’s finding that Plaintiff’s symptom reports were
8 inconsistent with the objective medical evidence, symptom reports cannot be solely
9 discounted on the grounds that they were not fully corroborated by the objective
10 medical evidence.⁶⁶ However, medical evidence is a relevant factor in considering
11 the severity of the reported symptoms.⁶⁷ Here, the ALJ highlighted various records
12 to show Plaintiff was able to work while under the influence of methamphetamine
13 and that his ability to work improved when he abstains from methamphetamine.⁶⁸
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16 ⁶³ *Molina*, 674 F.3d at 1112.

17 ⁶⁴ *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504
18 F.3d at 1036).

19 ⁶⁵ AR 24.

20 ⁶⁶ *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

21 ⁶⁷ *Id.*

22 ⁶⁸ *See* ECF No. 24-25 (citing AR 466-551, 411, 770, & 776).
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1 However, the reports the ALJ cites are Plaintiff's reported symptoms.⁶⁹ The
2 objective medical report the ALJ cites to discount Plaintiff's reported symptoms is
3 Dr. Page's psychological report, which as previously explained, the ALJ gave little
4 weight to regarding Plaintiff's functioning without substance abuse. On remand,
5 the ALJ may not discount Plaintiff's symptoms based on discounted medical
6 opinions.

7 Second, the ALJ also found Plaintiff's reported symptoms inconsistent with
8 his statements to his treatment providers.⁷⁰ In evaluating a claimant's symptom
9 claims, an ALJ may consider the consistency of an individual's own statements
10 made in connection with the disability-review process with any other existing
11 statements or conduct.⁷¹ Here, the ALJ highlighted treatment reports where
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14 ⁶⁹ Objective medical evidence" means "signs, laboratory findings, or both." 20 C.F.R.
15 § 404.1502(f). "Signs means one or more anatomical, physiological, or psychological
16 abnormalities that can be observed, apart from your statements (symptoms)." 20
17 C.F.R. § 404.1502(g).

18 ⁷⁰ AR 24-25.

19 ⁷¹ *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (The ALJ may consider
20 "ordinary techniques of credibility evaluation," such as reputation for lying, prior
21 inconsistent statements concerning symptoms, and other testimony that "appears
22 less than candid."); *Thomas*, 278 F.3d at 958-59.

1 Plaintiff reported improvements in mood and to be working.⁷² However, the same
2 notes cited by the ALJ include Plaintiff reporting “frustrations with work
3 situations,” “being angry with society,” “quite blue and easily angered” when he
4 stops using drugs, and getting lazy and having difficulty with motivation.⁷³
5 Reporting improvement in mood is not necessarily inconsistent with trying to work
6 while being too upset to complete assigned tasks in a timely manner. This is not a
7 clear and convincing reason to reject Plaintiff’s subjective symptom testimony.

8 The ALJ also discounted Plaintiff’s symptom reports because they were
9 inconsistent with his activities of daily living.⁷⁴ If a claimant can spend a
10 substantial part of the day engaged in pursuits involving the performance of
11 exertional or non-exertional functions, the ALJ may find these activities
12 inconsistent with the reported disabling symptoms.⁷⁵ The ALJ highlighted that
13 Plaintiff was able to handle issues such as finding housing, making appointments,
14 going to Alcoholic Anonymous and Narcotic Anonymous meetings, getting his truck
15 fixed, and opening a bank account for his mother.⁷⁶ In order for Plaintiff’s cited
16 activities to be deemed “high-functioning activities of daily living” constituting a
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18 ⁷² AR 24-25 (citing AR 482, 483, 762, & 781).

19 ⁷³ AR 482 & 762.

20 ⁷⁴ AR 25.

21 ⁷⁵ *Molina*, 674 F.3d at 1113.

22 ⁷⁶ AR 25 & 530.

1 clear and convincing reason to discount Plaintiff's symptoms, the ALJ needed to
2 have more meaningfully articulated this finding. These cited activities, which can
3 be achieved with limited interactions and not on an everyday basis, do not
4 "contradict claims of a totally debilitating impairment."⁷⁷

5 In summary, Plaintiff established the ALJ erred by discounting Plaintiff's
6 symptom reports.

7 **C. Other Steps: The ALJ must reevaluate.**

8 Plaintiff argues that the ALJ also erred at step two, step three, and in failing
9 to conduct an analysis at step four and step five. Because the ALJ's step two
10 analysis was based on an erroneous weighing of Plaintiff's symptom reports, the
11 ALJ on remand is to proceed with a new sequential analysis.

12 **D. Remand for Further Proceedings**

13 Plaintiff submits a remand for payment of benefits is warranted or in the
14 alternative, a remand for further proceedings is necessary. However, even if
15 Plaintiff's mental-health impairments are considered severe and the RFC is revised
16 to include all or many of the opined limitations, it is not clear that there is no work
17 existing in significant numbers that Plaintiff can perform. Therefore, remand for
18 further proceedings, rather than for an award of benefits, is necessary.⁷⁸

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20 ⁷⁷ *Molina*, 674 F.3d at 1112-13.

21 ⁷⁸ *See Garrison*, 759 F.3d at 1021; *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir.
22 2017).

1 On remand, the ALJ is to, reweigh the medical-opinion evidence, reevaluate
2 Plaintiff's symptom reports, and, if necessary, complete the sequential analysis,
3 including eliciting new testimony from a vocational expert.

4 **V. Conclusion**

5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is
7 **GRANTED.**
- 8 2. The Commissioner's Motion for Summary Judgment, **ECF No. 14**, is
9 **DENIED.**
- 10 3. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff
11 **REVERSING** and **REMANDING** the matter to the Commissioner of
12 Social Security for further proceedings consistent with this
13 recommendation pursuant to sentence four of 42 U.S.C. § 405(g).
- 14 4. The case shall be **CLOSED.**

15 **IT IS SO ORDERED.** The Clerk's Office is directed to file this Order,
16 provide copies to all counsel, and close the file.

17 **DATED** this 13th day of May 2020.

18
19 s/Edward F. Shea
EDWARD F. SHEA
20 Senior United States District Judge
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